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**Certified Civil Trial Specialist
By National Board of Trial Advocacy*

January 25, 2012

Secretary of the Pennsylvania
Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3256

Re: Gabron & Gabron, Inc. & Brontech Industries, Inc. c/o Kenneth
Gabron v. Windstream D&E Systems; Docket No. C-2011-2275927

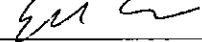
Dear Secretary:

Enclosed please find the Complainant's original Answer to New Matter and certificate of service for Gabron and Gabron, Inc. and Brontech Industries, Inc. against Windstream Communication in the above-referenced matter. The same were e-filed on this day.

Please contact me at 717-299-3726 or at ebrowne@n-hlaw.com if you have any questions or concerns, or if I can be of further assistance.

Very truly yours,

NIKOLAUS & HOHENADEL, LLP

By: 
C. Edward Browne.

CEB/ncg
Enclosures
cc: Kenneth Gabron (w/o enc.)
Norman J. Kennard, Esquire (w/enc.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GABRON & GABRON, INC. & :
BRONTECH INDUSTRIES, INC. :
 :
v. : No. 2011-2275927
 :
WINDSTREAM D&E SYTEMS :

ANSWER TO NEW MATTER

And Now comes Complainant, Gabron & Gabron, Inc. & Brontech Industries, Inc., and answers the new matter raised by Respondent, Windstream D&E Systems, as follows:

10. Respondent's paragraph ten is a legal conclusion to which no response is required. To the extent a response is required, the same is denied. It is specifically denied that Kenneth Smith, Bryan Reynolds, or any other individual, were ever authorized to effect any changes to Complainant's account. By way of further answer, and as established through Complainant's service contract, attached to Complainant's Complaint as Exhibit A, Kenneth Gabron was the only individual authorized to make changes on the account.

11. Denied. By way of further response, Complainant's service contract, attached to Complainant's Complaint as Exhibit A, could not be more clear in requiring written authorization prior to any changes to the account. Complainant has consistently honored that service contract and has not, in any way, established a pattern of not disputing Kenneth Smith's actions. To the contrary, Complainant immediately complained to Respondent as soon as he

found out Kenneth Smith and Bryan Reynolds submitted a change in ownership form for the account.

12. Admitted in part and denied in part. It is admitted that Complainant established telephone services with D&E in 2003, and that Kenneth Smith was a point of contact at that time. It is denied that Kenneth Smith was ever a point of contact for Windstream work orders; strict proof thereof is demanded at trial. As admitted more fully below, Kenneth Smith was no longer employed by Complainant in 2009. Consequently, Kenneth Smith was never a point of contact for Windstream. By way of further response, being a point of contact for service purposes does not, in any way, authorize Mr. Smith to act as owner of the business or to execute a change in ownership form.

13. Admitted in part and denied in part. It is admitted that Kenneth Smith was discharged from Gabron & Gabron, Inc. in 2009. It is further admitted that Complainant sent a letter to Respondent on July 10, 2011. It is denied that the July 10, 2011 letter was the first time Respondent became aware that Kenneth Smith was no longer employed by Gabron & Gabron, Inc. By way of further response, Complainant's February 3, 2009, letter was sent at the request of D&E Communications immediately following a phone call by Complainant to D&E Communications informing them that Kenneth Smith was no longer employed with, or a point of contact for, Gabron & Gabron, Inc. Additionally, Respondent knew Kenneth Smith was not authorized to make any changes to the account as Complainant's service contract, attached to Complainant's Complaint as Exhibit A, explicitly states that Kenneth Gabron was the only individual authorized to make changes on the account.

21. Admitted. By way of further response, Complainant at all times remained the owner of the account in question and in no way authorized a change in ownership.

22. Complainant is without sufficient information to form a belief as to the veracity of this paragraph; the same is therefore denied and strict proof thereof is demanded at trial.

23. Complainant is without sufficient information to form a belief as to the veracity of this paragraph; the same is therefore denied and strict proof thereof is demanded at trial. Further, it is specifically denied that “Kenneth Smith was known to Windstream as a point of contact on the account” as Kenneth Smith’s employment with Complainant was terminated prior to Windstream taking over the account. It is also specifically denied that Respondent did not receive “notice to the contrary” from Complainant. Complainant objected to the change in ownership form as soon as he became aware of it. By way of further response, being a point of contact on the account is not the same as ownership of the account and does not, in any way, authorize the point of contact to execute a change in ownership form.

24. Denied as stated. Mr. Gabron contacted Windstream on or about June 14, 2011 to request new and additional phone services. It was through that phone call that Mr. Gabron first learned Kenneth Smith had executed, and Respondent had received, a request for change in ownership of the account. Mr. Gabron responded to this information by: (1) immediately contesting the validity of the change in ownership; and (2) requesting that the remainder of the lines be cancelled and / or call-forwarded. Respondent complied with Mr. Gabron’s request in part, but did not correct the invalid and fraudulent change in ownership of account as requested by Mr. Gabron. By Respondent’s own admission, Respondent processed the change in ownership form three (3) days after this phone call despite being specifically told by Mr. Gabron, the owner of the account, that the request for change in ownership was invalid.

25. Complainant is without sufficient information to form a belief as to the veracity of the first sentence in this paragraph; the same is therefore denied and strict proof thereof is

demanded at trial. The second sentence is denied as stated. Mr. Gabron agreed to temporarily allow the numbers in question be re-forwarded to Mr. Reynolds. As stated by Mr. Gabron during said phone call, this was to be for a limited time and only until the issues regarding the change of ownership could be resolved. At no time did Mr. Gabron agree to a change of ownership of the account, or to a permanent transfer of the numbers in question. By way of further response, Complainant continued to contest the change of ownership. Specifically, Complainant sent the July 10, 2011 letter to Respondent. Respondent responded to Complainant's July 10, 2011 by telling him "Mr. Kenneth Smith was an authorized contact on the account and had the authority to make changes on the above-referenced account." A true and correct copy of Respondent's July 14, 2011 letter is attached as Exhibit E. Respondent further stated that they "will make no ownership changes until [they] receive a Court Order providing direction over the ownership of the account." Contrary to their July 14, 2011 letter, Respondent now claims Complainant agreed to the change of ownership. Respondent's claims further evince their unreasonable behavior. Kenneth Smith was never authorized in any way to make changes to Complainant's account, and Complainant never agreed to a change in ownership, or to a permanent transfer of the telephone numbers.

26. Admitted. By way of further response, Respondent responded to Complainant's July 10, 2011 letter by claiming "Mr. Kenneth Smith was an authorized contact on the account and had the authority to make changes on the above-referenced account." A true and correct copy of Respondent's July 14, 2011 letter is attached as Exhibit E.

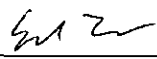
27. Complainant is without sufficient information to form a belief as to the veracity of this paragraph; the same is therefore denied and strict proof thereof is demanded at trial. By way of further response, Respondent acted unreasonably in failing to correct / rescind the change in

ownership request prior to August 3, 2011 and after being specifically informed that: Kenneth Smith was not authorized to execute the change in ownership, and Complainant did not agree to the change in ownership.

28. Paragraph 28 constitutes legal conclusions to which no response is required. To the extent a response is required, the same is denied. Further, it is specifically denied that Respondent acted in good faith. To the contrary, Respondent failed to honor Complainant's service contract, failed to contact Complainant prior to executing a change in ownership form regarding his account, failed to correct the change in ownership once they knew Kenneth Smith was not authorized to transfer ownership, and failed to work with Complainant in an honest and straight forward manner. By way of further response, Mr. Gabron spoke with Respondent's executive vice president, a John Fletcher, on August 18, 2011 and explained the unreasonable conduct committed by Respondent. Mr. Fletcher responded by stating "he would make it right," acknowledged that Kenneth Smith was not the owner of the account or the CEO of Gabron and Gabron, Inc. as claimed on the change of ownership form, and asked for additional time to investigate the incident. Mr. Fletcher then called Mr. Gabron three (3) days later stating there was nothing Respondent could do and that he, Mr. Fletcher, would not help Complainant any further. Further, at no time was written authorization requested from, or provided by, Mr. Gabron to change the ownership of the account in question. Respondent was required by Complainant's service contract to seek written authorization from Mr. Gabron prior to effecting any changes to the account; including a change in ownership. Respondent's failure to follow the terms of Complainant's service contract, and then to blame Complainant for that failure claiming he in some way acquiesced to the change in ownership, is unreasonable. Additionally, Respondent's failure to correct the problem, after being specifically told by Mr. Gabron, was

also unreasonable. Rather than act in a reasonable manner, Respondent has alternately claimed that Kenneth Smith was authorized to make changes to the account, admitted that Kenneth Smith was not authorized to make changes to the account, and then blamed Complainant for not objecting to the change in ownership prior to telling him a request for change in ownership had been approved. In total, Respondent has acted unreasonably in its dealings with Complainant.

Nikolaus & Hohenadel, LLP



C. Edward Browne
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Attorneys for Complainant

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WINDSTREAM COMMUNICATIONS, INC.

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Kristi M. Moody
Vice President - Law

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fax. 501.748.5172

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July 14, 2011

VIA OVERNIGHT MAIL

Mr. Kenneth Gabron
Gabron & Gabron, Inc.
1115 Marietta Ave., Ste. 16
Lancaster, PA 17603

Re: Windstream Account Number 011486763

Dear Mr. Gabron:

I am in receipt of your letter dated July 10, 2011, in which you request that Windstream turn over the above-referenced account to Gabron & Gabron, Inc.

After careful review of this situation, at this time Windstream simply cannot agree to turn over this account to Gabron & Gabron, Inc. That is because the Request for Change of Ownership Form was signed by Mr. Kenneth Smith on behalf of Gabron & Gabron, Inc. At the time of Windstream's receipt of the form, Mr. Kenneth Smith was an authorized contact on the account and had the authority to make changes on the above-referenced account. I understand your position is that Mr. Smith was no longer employed by Gabron & Gabron, Inc., at the time the change was made. However, Windstream has no direct knowledge of this statement and obviously must follow authorized contact directives regarding accounts.

Windstream will make no ownership changes until we receive a Court Order providing direction over the ownership of the account.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kristi M. Moody". The signature is written in a cursive, flowing style.

Kristi M. Moody
Vice President - Law

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GABRON & GABRON, INC. & :
BRONTECH INDUSTRIES, INC. :
v. : No. 2011-2275927
WINDSTREAM D&E SYTEMS :

CERTIFICATE OF SERVICE

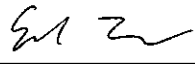
I, C. Edward Browne, Esquire, hereby certify that I have this date, served a true and correct copy of Complainant's Answer to New Matter upon the below-listed individuals by depositing same in the United States Mail, first-class, postage prepaid addressed as follows:

Norman J. Kennard, Esquire
THOMAS, LONG, NIESEN & KENNARD
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500

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NIKOLAUS & HOHENADEL, LLP

Date: 1/25/12

By: 
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Attorney for Complainant



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FROM:

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To:

Secretary of the Pennsylvania
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